

83-150-I

THE STATE OF NEW HAMPSHIRE

ATTORNEY GENERAL
GREGORY H. SMITH

DEPUTY ATTORNEY GENERAL
PETER W. MOSSEAU

ASSISTANT ATTORNEYS GENERAL
JOHN T. PAPPAS
MARC R. SCHEER
DONALD J. PERRAULT
MARTIN R. JENKINS
BETSY S. WESTGATE
EDWARD L. CROSS, JR.
PETER C. SCOTT
MICHAEL A. PIGNATELLI
BRIAN T. TUCKER
PAUL BARBADORO
BRUCE E. MOHL
JOHN A. MALMBERG
DOUGLAS L. PATCH
LORETTA S. PLATT
ROBERT P. CHENEY, JR.



THE ATTORNEY GENERAL
STATE HOUSE ANNEX
25 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

ASSISTANT ATTORNEYS GENERAL
LESLIE J. LUDTKE
ANDREW L. ISAAC
RONALD F. RODGERS
G. DANA BISBEE
PETER T. FOLEY
STEVEN M. HOURAN
JEFFREY R. HOWARD
EVE H. OYER
GREGORY W. SWOPE
JAMES D. CAHILL, III
CHARLES W. GRAU
DANIEL J. MULLEN
T. DAVID FLOURDE

ATTORNEYS
EDNA M. CONWAY
AMY L. IGNATIUS
ROBERT B. MUH
DAVID K. MULHERN
JAMES A. SWEENEY

February 17, 1984

Mr. Charles W. Desmarais, Jr.
Financial Responsibility Administrator
Division of Motor Vehicles
Hazen Drive
Concord, New Hampshire 03301

Dear Mr. Desmarais:

By memorandum dated November 7, 1983, you requested an opinion concerning the right of an individual in private employment to confiscate an altered license or a license which does not belong to the person presenting it. It is our opinion that a private individual may not so confiscate a license.

RSA 263:12 makes it a misdemeanor to display an altered driver's license or to display as one's own a driver's license not issued to the person by the proper authority.

Under RSA 594:10, a peace officer may arrest any person who he has probable cause to believe has committed a misdemeanor in his presence. Although New Hampshire statutes do not specifically state that private persons have authority to arrest, at common law it was generally true that private persons could effect warrantless arrests of persons who committed felonies or who committed misdemeanors which occurred in their presence and were breaches of the peace. 1 N.H.P. Criminal §156. It would be difficult to argue, however, that the displaying of an altered driver's license or a license belonging to another constitutes a breach of the peace. It should also be noted that any lawful arrest by a private person could lead to civil liability.

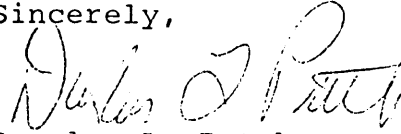


Such a license may be seized incident to a lawful arrest. Since a private individual in New Hampshire for the reasons stated does not have the right to arrest a person who has displayed an altered license or one belonging to another, he could not confiscate the license. There is nothing, however, to prevent him from reporting the matter to a law enforcement official for further action.

It should also be noted that although RSA 263:12, IV makes it a misdemeanor for any person to refuse to surrender his driver's license, the provision only applies to surrender to a member of the department of safety when the license has been suspended, revoked or cancelled.

I trust this has answered your questions. Please let us know if you require anything further.

Sincerely,



Douglas L. Patch
Assistant Attorney General
Division of Legal Counsel

DLP:ab

#83-150-I

cc: Mr. Richard M. Flynn, Commissioner
Mr. Earl M. Sweeney, Deputy Commissioner
Mr. Thomas A. Power, Director